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C O N F I D E N T I A L SECTION 01 OF 03 ABUJA 002276

SIPDIS

STATE FOR AF/FO, AF/W, AF/RSA, DRL, INR/AA;

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TAGS: [PGOV](#) [PREL](#) [OVIP](#) [PINR](#) [NI](#)

SUBJECT: NIGERIAN ATTORNEY GENERAL AONDOAKAA EXPRESSES  
CONCERN OVER PRESIDENT YAR'ADUA'S HEALTH

REF: ABUJA 2272 AND PREVIOUS

Classified By: Political Counselor James P. McAnulty  
for reasons in Sections 1.4 (b) and (d).

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SUMMARY  
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¶1. (C) Nigeria's Attorney General and Minister of Justice Michael Aondoakaa shared his concerns with Ambassador December 14 about President Yar'Adua's health and his views on electoral reform. Ambassador noted the importance of following Constitutional processes and rule of law at this time. In response to the Ambassador's appeal for transparency and rule of law in cases involving U.S. businesses in Nigeria, Aondoakaa said he would stress to the Chief Judge of the Federal High Court the importance of applying the law transparently in these commercial cases. In follow up to a request made in October 2009 to provide information on investigations and prosecutions of incidents of religious conflict, Aondoakaa assured the Ambassador he would provide a comprehensive report based on his recent meetings with all the state-level attorneys-general. END SUMMARY.

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PRESIDENT YAR'ADUA'S HEALTH  
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¶2. (C) In a December 14 meeting, Attorney General Aondoakaa expressed concern to the Ambassador about Nigerian President Yar'Adua's failing health. The Attorney General claimed that he had spoken recently with the President's Chief Security Officer (CSO) Yusuf Tilda, who reported that Yar'Adua's condition had improved but that he still lacked energy, and who estimated that Yar'Adua could sit in the office for up to an hour. (N.B.: All our other reports are contrary to this account. END NOTE.) The Attorney General questioned the accuracy of media reports that conflicted with the Administration's announcements. Aondoakaa noted that Tilda had contacted him recently to ask that he press Senate President David Mark and House Speaker Dimeji Bankole to act on the President's bill to authorize autonomous funding for the Independent National Electoral Commission (INEC) and to establish an Electoral Offense Commission.

¶3. (C) Aondoakaa expressed hope, but not optimism, that the President would return to Nigeria before Christmas. The Attorney General offered his concern that Nigeria could

suffer a constitutional crisis if Yar'Adua did not return before the Chief Justice retired on December 31. According to the Attorney General, only the President could swear in a new Chief Justice or appoint an Acting President of the court of appeals. Two potential solutions were cited: the new Chief Justice could travel to Saudi Arabia to be sworn in by Yar'Adua (which, he said, is unlikely because many Nigerians perceive the power of the Presidency to remain within Nigeria), or Yar'Adua could send a letter to the National Assembly, which he said he would be responsible to draft as Minister of Justice, to notify the legislators of his absence and request that the Vice President be appointed as Acting President.

14. (C) Aondoakaa said President Yar'Adua and he had prepared a letter to notify the National Assembly when Yar'Adua departed previously on vacation, but the Presidential Advisor on National Assembly Affairs did not deliver it, because the Qon National Assembly Affairs did not deliver it, because the Advisor believed that Yar'Adua's reinstatement would then remain subject to approval by the National Assembly upon his return. Aondoakaa rebuffed this view as a misinterpretation of the law. He claimed that President Olusegun Obasanjo never followed the requirement for a letter transferring powers. However, Aondoakaa said, this is a law that he encouraged Yar'Adua to follow in order to uphold the associated Constitutional requirement. The Attorney General also noted that then Governor Yar'Adua had transferred authority to his deputy during absences throughout his tenure in the Katsina statehouse. (N.B.: Separately, a Presidential Advisor told PolCouns the same day that the Yar'Adua administration planned to deliver a letter to the

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National Assembly December 15 to designate Vice President Jonathan as Acting President; please see reftel. END NOTE.)

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PROVISIONS ON DESIGNATING ACTING PRESIDENT  
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15. (C) Aondoakaa claimed that Vice President Goodluck Jonathan called him to ask about the President's health and asked whether he could legally meet with the Federal Executive Council without having the title of "Acting President." The Attorney General said he told Jonathan that nothing in the Constitution prevented the Vice President from meeting with Cabinet Ministers. Aondoakaa noted significant pressure on the Vice President, especially from the media. Aondoakaa explained that the Constitution had two conflicting sections on this issue, with one indicating that the Vice President can assume the functions of the President in his absence, with the other stipulating that such transfer of power is necessary in writing.

16. (C) Aondoakaa said he disagreed with the recommendation by the Electoral Reform Committee (ERC) and the push by the National Assembly to prescribe a time frame in which courts must resolve election disputes. (N.B.: The National Assembly wants to hold the next national elections in November 2010, allowing six months to resolve legal disputes, while the ERC wants to hold these elections in April 2011, allowing three months to resolve disputes. END NOTE.) The Attorney General said he considered any time limit as a "time bomb" which would enable the ruling political party to congest the court system by funding, for example, multiple election disputes cases between smaller parties until the set time had lapsed. Aondoakaa supported the creation of an Electoral Offenses Commission, an independent organization that would assume INEC's current law enforcement power to initiate prosecutions of electoral offenses.

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NIGERIAN BUSINESS CLIMATE  
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¶7. (C) The Ambassador told the Attorney General that the U.S. business community had grown increasingly concerned by lack of transparency and rule of law in Nigeria regarding American companies and commercial disputes. She specifically mentioned a U.S. bank and a flour company which appeared to be facing less than transparent commercial practices. She also provided the Attorney General with letters from the U.S. bank as well as from the U.S mission requesting an improvement in the rule of law in these disputes. Ambassador also asked for his support and leadership to ensure transparency. Aondoakaa said he would discuss the U.S. concern with the Chief Judge of the Federal High Court and, without intervening in specific cases, would emphasize the importance of transparently applying the law.

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FOLLOW UP ON SECTARIAN VIOLENCE  
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¶8. (C) In response to the Ambassador's inquiry about a previous request to provide information on investigations and prosecutions of incidents of religious conflict, Aondoakaa assured the Ambassador that he would send a comprehensive report. He noted that several states had started Qreport. He noted that several states had started prosecutions, but claimed that the police often obstructed justice by refusing to supply necessary documents. The Attorney General said that, to facilitate justice, he had given authority to state attorneys general to prosecute federal criminal offenses with state criminal offenses. He cited his recent meeting with the state-level attorneys general that covered a number of issues, including religious freedoms. Aondoakaa noted that he was surprised by the number of religious incidents in the country. He mentioned specifically that the Sokoto Attorney General had reported the activities of a fundamentalist group that was suspected of Iranian funding that had recently beheaded an imam. Ambassador, alarmed by this report, asked the Attorney General for information on the name of the group and any more details that he could provide. (N.B.: We shared this information with RAO and will seek other verification of this

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report.)

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COMMENT  
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¶9. (C) By most accounts, the controversial Attorney General remains an obstacle to effective prosecution of major corruption cases and enactment of genuine electoral reforms. We will continue to press him for the information we requested in October on the status of investigations and prosecutions of cases involving sectarian violence.

¶10. (U) Embassy coordinated this telegram with ConGen Lagos.

SANDERS